

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL  
200 EAST COLFAX AVENUE SUITE 091  
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Pierce Lively, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Clean Up of Sales and Use Tax Exemptions for Special Fuels, Farm Equipment, and Livestock

### Summary

Sections 39-26-715 and 39-26-716, C.R.S., in relevant part, create the sales and use tax exemptions for special fuels, farm equipment, and livestock. These sections contain a number of antiquated and redundant provisions. In addition, the sales and use tax exemptions are separated in ways that are unnecessary and may create conflicts. Section 39-26-716, C.R.S., contains an unused definition of "agricultural compounds," unnecessarily references "poultry" in a sales and use tax exemption for "livestock," and separates sales and use tax exemptions in a way that may create confusion and lead to future disparity. Section 39-26-715 (2)(a)(I), C.R.S., contains the use tax for special fuel used in farm vehicles, even though the sales tax for special fuel used in farm vehicles is in section 39-26-716 (2)(a), C.R.S. These antiquated and redundant provisions should be removed from statute and these unnecessarily separate provisions should be reorganized.

The Department of Revenue brought this issue to the attention of the Office of Legislative Legal Services.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

# Analysis

## 1. Definition of "agricultural compounds."

The definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S., is outdated. House Bill 12-1037 removed the sales and use tax exemptions for "agricultural compounds" from sections 39-26-716 (2)(d) and (3)(d), C.R.S., but House Bill 12-1037 did not remove section 39-26-716 (1)(a), C.R.S., which defines "agricultural compounds." Thus, although the definition of "agricultural compounds" remains in section 39-26-716, C.R.S., the term is no longer used in that section. The definition of "agricultural compounds" should be removed from section 39-26-716, C.R.S., by removing section 39-26-716 (1)(a), C.R.S.

## 2. Sale and use of bedding for "livestock or poultry."

The separate reference to "poultry" in section 39-26-716 (4)(c), C.R.S., is redundant because "poultry" is already included within the definition of "livestock." Section 39-26-716 (4)(c), C.R.S., authorizes a tax exemption for "[A]ll sales and purchases of straw and other bedding for use in the care of livestock or poultry and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry." For purposes of section 39-26-716 (4)(c), C.R.S., "livestock" is defined to include poultry:

**39-26-102. Definitions.** As used in this article 26, unless the context otherwise requires:

(5.5) "Livestock" means cattle, horses, mules, burros, sheep, lambs, **poultry**, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S. (**Emphasis added.**)

Accordingly, it is unnecessary to explicitly reference "poultry" in section 39-26-716 (4)(c), C.R.S. The reference to "poultry" should be removed from section 39-26-716 (4)(c), C.R.S.

**3. Storage and use of neat cattle, sheep, lambs, swine, and goats or the storage and use of mares and stallions kept, held, and used for breeding purposes only.**

The separate use tax exemption for certain livestock in section 39-26-716 (3)(a), C.R.S., is redundant because there is a broader exemption from sales and use taxes that applies to those livestock. Section 39-26-716 (3)(a), C.R.S., creates a use tax exemption for the storage and use of certain animals:

**39-26-716. Agriculture and livestock - special fuels - definitions.** (3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage and use of neat cattle, sheep, lambs, swine, and goats within this state, or the storage and use within this state of mares and stallions kept, held, and used for breeding purposes only;

Section 39-26-716 (4)(a), C.R.S., creates a sales and use tax exemption for all livestock:

**39-26-716. Agriculture and livestock - special fuels - definitions.** (4) The following shall be exempt from taxation under the provisions of parts 1 and 2 of this article:

(a) All sales and purchases of livestock, all sales and purchases of live fish for stocking purposes, and all farm close-out sales and the storage, use, or consumption of such property;

Under the definition of livestock quoted above in section 39-26-102 (5.5), C.R.S., this exemption includes all of the animals listed in section 39-26-716 (3)(a), C.R.S.

Therefore, the sales and use tax exemption in section 39-26-716 (4)(a), C.R.S., renders the narrower use tax exemption in section 39-26-716 (3)(a), C.R.S., redundant. As a redundant provision, section 39-26-716 (3)(a), C.R.S., should be removed.

**4. Separate sales and use tax exemptions.**

There are three areas in which the statutes separate the exemptions from sales and use taxes for the same product or purchases. The separation of the exemptions can lead to conflicts or disparities between the exemptions and create confusion. Therefore, in each area, the exemptions should be placed together.

**4.1. Sales and use tax exemptions for the sale and use of special fuel in the operation of farm vehicles.**

Section 39-26-716 (2)(a), C.R.S., creates a sales tax exemption for the sale of special fuel used for the operation of farm vehicles.

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**39-26-716. Agriculture and livestock - special fuels - definitions. (2)**

The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

Section 39-26-715 (2)(a)(I), C.R.S., in relevant part, creates a use tax exemption for the storage, use, or consumption of special fuel used for the operation of farm vehicles.

**39-26-715. Fuel and oil - definitions. (2)** The following are exempt from taxation under the provisions of part 2 of this article:

(a) (I) The storage, use, or consumption of gasoline that is taxed under the provisions of part 1 of article 27 of this title and all gasoline that is taxed under said provisions and the tax on which is refunded **and special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when the same are being used on farms or ranches;** except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of part 2 of this article prior to January 1, 1989, shall not be exempt. (**Emphasis Added.**)

The sales tax exemption in 39-26-716 (2)(a), C.R.S., and the use tax exemption in 39-26-715 (2)(a)(I), C.R.S., apply to the same fuel being used for the same purpose. To prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-715 (2)(a)(I) and 39-26-716 (2)(a), C.R.S.

**4.2. Sales and use tax exemptions for the sale, purchase, use, or consumption of farm equipment.**

Section 39-26-716 (2)(b), C.R.S., creates a sales tax exemption for the sale and purchase of farm equipment. Section 39-26-716 (3)(b), C.R.S., creates a use tax exemption for the sale and purchase of farm equipment.

**39-26-716. Agriculture and livestock - special fuels - definitions. (2)**

The following shall be exempt from taxation under the provisions of part 1 of this article:

(b) All sales and purchases of farm equipment;

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(b) The storage, use, or consumption of farm equipment;

The sales tax exemption in 39-26-716 (2)(b), C.R.S., and the use tax exemption in 39-26-716 (3)(b), C.R.S., both apply to farm equipment. To prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-716 (2)(b) and 39-26-716 (3)(b), C.R.S.

#### **4.3. Sales and use tax exemptions for certain farm equipment under lease or contract.**

Section 39-26-716 (2)(c), C.R.S., creates a sales tax exemption for certain farm equipment under lease or contract. Section 39-26-716 (3)(c), C.R.S., creates a use tax exemption for the same farm equipment.

**39-26-716. Agriculture and livestock - special fuels - definitions.** (2) The following shall be exempt from taxation under the provisions of part 1 of this article:

(c) (I) Any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(II) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(c) (I) Any farm equipment under lease or contract if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for storage, use, or consumption primarily and directly in any farm operation.

(II) The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be stored, used, or consumed primarily and directly in a farm operation.

There are minor differences between sections 39-26-716 (2)(c) and 39-26-716 (3)(c), C.R.S., because section 39-26-716 (2)(c), C.R.S., was amended in House Bill 00-1162, but section 39-26-716 (3)(c), C.R.S., was not. These differences are non-substantive and the two sections both apply to farm equipment used "primarily and directly in any farm operation". Therefore, to prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-716 (2)(c) and 39-26-716 (3)(c), C.R.S.

## **Statutory Charge<sup>2</sup>**

The SRC is tasked with recommending legislation "to effect such changes in the law as [the SRC] deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The unused definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S., is an antiquated and redundant rule of law. The unnecessary inclusion of "poultry" in the sales and use tax exemption for "livestock" in section 39-26-716 (4)(c), C.R.S., is also a redundant rule of law. The unnecessary separation of the sales and use tax exemptions in sections 39-26-715 (2)(a)(I) and 39-26-716 (2) and (3), C.R.S., can lead to redundant or contradictory rules of law. Thus, the removal of the definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S.; the removal of the word "poultry" in the sales and use tax exemption for "livestock" in section 39-26-716 (4)(c), C.R.S.; and the reorganization of the sales and use tax exemptions for special fuels, farm equipment and livestock all fall within the SRC's charge. In addition, such repeals and reorganization will shorten the length of the statutes.

## **Proposed Bill**

The attached bill draft amends sections 39-26-715 and 39-26-716, C.R.S. as described in this memorandum.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.3.21

DRAFT

LLS NO. 21-0726.01 Pierce Lively x2059

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Special Fuel Farm Equipment Sales Use Tax"

**A BILL FOR AN ACT**

101      **CONCERNING NONSUBSTANTIVE MODIFICATIONS TO SALES AND USE**  
102              **TAX EXEMPTIONS, AND, IN CONNECTION THEREWITH,**  
103              **REORGANIZING SALE AND USE TAX EXEMPTIONS FOR**  
104              **AGRICULTURE, LIVESTOCK, AND SPECIAL FUELS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill removes an unused definition of "agricultural compounds" and a redundant reference to a sales and use tax exemption for poultry and livestock. The bill also

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

reorganizes special fuel and farm equipment sales and use tax exemptions so that they are in the same location.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-715, **amend**  
3 (2) introductory portion and (2)(a)(I) as follows:

4 **39-26-715. Fuel and oil - definitions.** (2) The following are  
5 exempt from taxation under the provisions of part 2 of this ~~article~~  
6 ARTICLE 26:

7 (a) (I) The storage, use, or consumption of gasoline that is taxed  
8 under the provisions of part 1 of article 27 of this ~~title~~ TITLE 39 and all  
9 gasoline that is taxed under said provisions and the tax on which is  
10 refunded; ~~and special fuel, as defined in section 39-27-101 (29), used for~~  
11 ~~the operation of farm vehicles when the same are being used on farms or~~  
12 ~~ranches;~~ except that aviation fuel used in turbo-propeller or jet engine  
13 aircraft and upon which a tax was collected pursuant to the provisions of  
14 part 2 of this ~~article~~ ARTICLE 26 prior to January 1, 1989, shall not be  
15 exempt.

16 **SECTION 2.** In Colorado Revised Statutes, 39-26-716, **amend**  
17 (4) introductory portion, (4)(b), and (4)(c); **repeal** (1)(a), (2), and (3); and  
18 **add** (4)(d), (4)(e), and (4)(f) as follows:

19 **39-26-716. Agriculture and livestock - special fuels -**  
20 **definitions.** (1) For purposes of this section, unless the context otherwise  
21 requires:

22 (a) ~~"Agricultural compounds" means:~~

23 ~~(I) Insecticides, fungicides, growth-regulating chemicals,~~  
24 ~~enhancing compounds, vaccines, and hormones;~~

25 ~~(H) Drugs, whether dispensed in accordance with a prescription~~



1     ~~or not, that are used for the prevention or treatment of disease or injury~~  
2     ~~in livestock; and~~

3             ~~(HH) Animal pharmaceuticals that have been approved by the food~~  
4     ~~and drug administration.~~

5             ~~(2) The following shall be exempt from taxation under the~~  
6     ~~provisions of part 1 of this article:~~

7             ~~(a) The sale of special fuel, as defined in section 39-27-101 (29),~~  
8     ~~used for the operation of farm vehicles when such vehicles are being used~~  
9     ~~on farms and ranches;~~

10            ~~(b) All sales and purchases of farm equipment;~~

11            ~~(c) (I) Any farm equipment under lease or contract, if the fair~~  
12     ~~market value of the equipment is at least one thousand dollars and the~~  
13     ~~equipment is rented or leased for use primarily and directly in any farm~~  
14     ~~operation.~~

15            ~~(H) The lessor or seller of such farm equipment shall obtain a~~  
16     ~~signed affidavit from the lessee, renter, or purchaser affirming that the~~  
17     ~~farm equipment will be used primarily and directly in a farm operation.~~

18            ~~(d) and (e) Repealed.~~

19            ~~(3) The following shall be exempt from taxation under the~~  
20     ~~provisions of part 2 of this article:~~

21            ~~(a) The storage and use of neat cattle, sheep, lambs, swine, and~~  
22     ~~goats within this state, or the storage and use within this state of mares~~  
23     ~~and stallions kept, held, and used for breeding purposes only;~~

24            ~~(b) The storage, use, or consumption of farm equipment;~~

25            ~~(c) (I) Any farm equipment under lease or contract if the fair~~  
26     ~~market value of such equipment is at least one thousand dollars and the~~  
27     ~~equipment is rented or leased for storage, use, or consumption primarily~~

1 ~~and directly in any farm operation.~~

2 ~~(H) The lessor shall obtain a signed affidavit from the lessee or~~  
3 ~~renter affirming that the farm equipment will be stored, used, or~~  
4 ~~consumed primarily and directly in a farm operation.~~

5 ~~(d) and (e) Repealed.~~

6 (4) The following ~~shall be~~ ARE exempt from taxation under the  
7 provisions of parts 1 and 2 of this ~~article~~ ARTICLE 26:

8 (b) All sales and purchases of feed for livestock, all sales and  
9 purchases of seeds, and all sales and purchases of orchard trees and the  
10 storage, use, or consumption of such property; ~~and~~

11 (c) All sales and purchases of straw and other bedding for use in  
12 the care of livestock ~~or poultry~~ and the storage, use, or consumption of  
13 straw and other bedding for use in the care of livestock; ~~or poultry~~; AND

14 (d) THE SALE OF SPECIAL FUEL, AS DEFINED IN SECTION 39-27-101  
15 (29), USED FOR THE OPERATION OF FARM VEHICLES WHEN SUCH VEHICLES  
16 ARE BEING USED ON FARMS AND RANCHES AND THE STORAGE, USE, OR  
17 CONSUMPTION OF SUCH SPECIAL FUEL;

18 (e) ALL SALES AND PURCHASES OF FARM EQUIPMENT AND THE  
19 STORAGE, USE, OR CONSUMPTION OF FARM EQUIPMENT; AND

20 (f) (I) ANY FARM EQUIPMENT UNDER LEASE OR CONTRACT, IF THE  
21 FAIR MARKET VALUE OF THE EQUIPMENT IS AT LEAST ONE THOUSAND  
22 DOLLARS AND THE EQUIPMENT IS RENTED OR LEASED FOR USE PRIMARILY  
23 AND DIRECTLY IN ANY FARM OPERATION.

24 (II) THE LESSOR OR SELLER OF SUCH FARM EQUIPMENT SHALL  
25 OBTAIN A SIGNED AFFIDAVIT FROM THE LESSEE, RENTER, OR PURCHASER  
26 AFFIRMING THAT THE FARM EQUIPMENT WILL BE USED PRIMARILY AND  
27 DIRECTLY IN A FARM OPERATION.

1           **SECTION 3.** In Colorado Revised Statutes, 29-2-105, **amend**  
2           (1)(d)(I)(F) as follows:

3           **29-2-105. Contents of sales tax ordinances and proposals.**

4           (1) The sales tax ordinance or proposal of any incorporated town, city,  
5           or county adopted pursuant to this article 2 shall be imposed on the sale  
6           of tangible personal property at retail or the furnishing of services, as  
7           provided in subsection (1)(d) of this section. Any countywide or  
8           incorporated town or city sales tax ordinance or proposal shall include the  
9           following provisions:

10           (d) (I) A provision that the sale of tangible personal property and  
11           services taxable pursuant to this article 2 shall be the same as the sale of  
12           tangible personal property and services taxable pursuant to section  
13           39-26-104, except as otherwise provided in this subsection (1)(d). The  
14           sale of tangible personal property and services taxable pursuant to this  
15           article 2 shall be subject to the same sales tax exemptions as those  
16           specified in part 7 of article 26 of title 39; except that the sale of the  
17           following may be exempted from a town, city, or county sales tax only by  
18           the express inclusion of the exemption either at the time of adoption of  
19           the initial sales tax ordinance or resolution or by amendment thereto:

20           (F) The exemption for sales of farm equipment and farm  
21           equipment under lease or contract specified in ~~section 39-26-716 (2)(b)~~  
22           ~~and (2)(c)~~ SECTION 39-26-716 (4)(e) AND (4)(f). The express inclusion of  
23           the exemption by a town, city, or county before August 2, 2019, does not  
24           exempt from the town, city, or county sales tax any visual, electronic  
25           identification, or matched pair ear tags and electronic identification  
26           readers used to scan ear tags that are used by a farm operator to identify  
27           or track food animals, including animals used for food or in the

1 production of food, that were added to the definition of "farm equipment"  
2 set forth in section 39-26-716 (1)(d) by House Bill 19-1162, enacted in  
3 2019, and thereby exempted from state sales and use taxes but such a  
4 town, city, or county may expressly exempt such items by a subsequent  
5 amendment to its sales tax ordinance or resolution.

6 **SECTION 4. Act subject to petition - effective date.** This act  
7 takes effect at 12:01 a.m. on the day following the expiration of the  
8 ninety-day period after final adjournment of the general assembly; except  
9 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
10 of the state constitution against this act or an item, section, or part of this  
11 act within such period, then the act, item, section, or part will not take  
12 effect unless approved by the people at the general election to be held in  
13 November 2022 and, in such case, will take effect on the date of the  
14 official declaration of the vote thereon by the governor.